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11 MATCH GROUP, LLC (erroneously sued as
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12

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15
16 ELIZABETH SANFILIPPO, an
individual,

17 Plaintiff,

18 v.

19 TINDER, INC., a Delaware
20 corporation, and DOES 1 through
20, Inclusive,

21 Defendants.
22

CASE NO. 2:18-cv-08372-AB (JEMx)

[Assigned to Hon. André Birotte Jr.]

**DEENDANT MATCH GROUP,
LLC'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF ELIZABETH
SANFILIPPO IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
COMPEL**

Date: November 30, 2018

Time: 10:00 am

Place: Crtrm. 7B

*[Removed from the Superior Court of the
State of California, County of Los
Angeles, Case No. BC718649]*

1 Defendant Match Group, LLC (“Match”) (erroneously sued as Tinder, Inc.)
 2 hereby submits the following objections to the Declaration of Elizabeth Sanfilippo
 3 in Support of Plaintiff Elizabeth Sanfilippo’s (“Plaintiff”) Opposition to Match’s
 4 Motion to Compel Arbitration. In support of her Opposition, Plaintiff submits
 5 Plaintiff’s Declaration and Exhibits A and B thereto. Plaintiff’s Declaration
 6 contains unsubstantiated, conclusory and speculative assertions that are wholly
 7 lacking in foundation and should be disregarded, as provided for herein.

8 Under the Court’s Local Rules, “[d]eclarations shall contain only factual,
 9 evidentiary matter and shall conform as far as possible to the requirements of
 10 F.R.Civ.P. 56(c)(4).” L.R. 7-7. Rule 56(c)(4) provides that “[a]n affidavit or
 11 declaration used to support or oppose a motion must be made on personal
 12 knowledge, set out facts that would be admissible in evidence, and show that the
 13 affiant or declarant is competent to testify on the matters stated.” *Id.* A declaration
 14 made “on information and belief” does not meet the requirement of personal
 15 knowledge under Fed. R. Civ. P. 56(c)(4). *See Columbia Pictures Indus., Inc. v.*
 16 *Prof’l Real Estate Investors, Inc.*, 944 F.2d 1525, 1529 (9th Cir. 1991). Bare
 17 allegations of fact or legal conclusions are also insufficient to qualify as personal
 18 knowledge under Rule 56(c)(4).

19 To authenticate a document attached as an exhibit, “the proponent must
 20 produce evidence sufficient to support a finding that the item is what the proponent
 21 claims it is.” *See* FED. R. EVID. 901(a). A document authenticated through
 22 personal knowledge must be attached to a declaration, and the declarant must be a
 23 competent witness who wrote the document, signed it, used it, or saw others do so.
 24 *See Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533 (9th Cir. 2011) (applying
 25 the personal knowledge requirement to affidavits).

26 Match’s objections are as follows:

- 27 • Paragraph 3: Paragraph 3 of Plaintiff’s Declaration provides: “The

1 arbitration agreement is attached as Exhibit A. This agreement was
 2 presented to me on a ‘take it or leave it’ basis. It was drafted solely by
 3 Tinder. I was never afforded an opportunity to modify or otherwise
 4 negotiate any of its terms.”

5 Match objects to the second, third and fourth sentences as conclusory and
 6 lacking in foundation. Match also objects to the third sentence as speculative and to
 7 the second sentence as speculative and containing inadmissible hearsay.

8 Paragraph 4: Paragraph 4 of Plaintiff’s Declaration provides: “The
 9 arbitration agreement’s ‘effective date’ is February 1, 2018. I always
 10 believed that the agreement only covers claims that arise after the
 11 effective date. Nobody at Tinder ever represented to me that the
 12 arbitration agreement required me to arbitrate claims that arose prior the
 13 effective date.”

14 Match objects to the second and third sentences as conclusory. Match further
 15 objects to the second sentence as lacking in foundation.

16 Paragraph 5: Paragraph 5 of Plaintiff’s Declaration provides: “The
 17 harassments [sic] that I suffered took place long before the effective date.
 18 I made claims with Tinder regarding the harassments by contacting
 19 Tinder’s human resources department. My claim regarding Nate Nesbitt
 20 was made in May or June of 2017. My claim regarding Steve Liu was
 21 made on or before January 5, 2018.”

22 Match objects to this paragraph as conclusory, speculative and not properly
 23 limited in time.

24 Paragraph 6 (misabeled Paragraph 4): Paragraph 6 of Plaintiff’s Declaration
 25 provides: “As far as I am aware, Steve Liu was never reprimanded for his
 26 harassment. My claim with Tinder regarding Steve Liu was pending prior
 27

1 to the effective date. My claim with Tinder regarding Steve Liu was still
 2 pending when Tinder terminated my employment on March 1, 2018.”

3 Match objects to this paragraph as conclusory, lacking in foundation and
 4 speculative. Match objects to the first sentence because it does not meet the
 5 requirement of personal knowledge under Rule 56(c)(4). *See Columbia Pictures*,
 6 944 F.2d at 1529. Accordingly, Plaintiff’s assertion that “As far as [she is] aware,
 7 Steve Liu was never reprimanded for his harassment” is of no consequence and not
 8 proper evidence. Match further objects to the second and third sentences as vague.

- 9 • Paragraph 7 (misabeled Paragraph 5) and Exhibit B: Paragraph 7 of
 10 Plaintiff’s Declaration provides: “Attached as Exhibit B is a true and
 11 correct copy of a Tinder’s Terms of use, which is available online at
 12 <https://www.gotinder.com/terms>.”

13 Match objects to Exhibit B as irrelevant, speculative, and lacking in
 14 foundation. Match also objects to Plaintiff’s attempts to offer statements in
 15 Exhibit B for the truth of the matters asserted, which contains inadmissible hearsay.

16 Match respectfully requests that the Court grant Match’s objections and
 17 disregard the objectionable statements in the Declaration and corresponding Exhibit
 18 A in considering Plaintiff’s Opposition to Match’s Motion to Compel.

19
 20 Dated: November 16, 2018

DLA PIPER LLP (US)

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 22 By: /s/ Cristina Torres
 CRISTINA TORRES

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 24 *Attorneys for Defendant*
 25 *Match Group, LLC (erroneously sued as*
 26 *Tinder, Inc.)*